

U.S. ENVIRONMENTAL PROTECTION AGENCY

STAKEHOLDERS' MEETING
PRESENTATION ON
METHYL BROMIDE CRITICAL USE ALLOCATION RULE

Friday, August 15, 2003

9:00 a.m.

1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

PARTICIPANTS:

Hodayah Finman, Chairperson

Dave Riggs

Tom Krugman

Neil Nagata

Reggie Brown

Marta Montoro

Allen Jennings

Paul Balzarac

Anne Gresecke, Ph.D.

Dave McAllistar

Tom Land

P R O C E E D I N G S

CHAIRPERSON FINMAN: Good morning.

I want to thank everyone for coming to this meeting to discuss the critical use allocation rule-making. As you know, this is the sixth public stakeholder meeting we've had this summer on this particular rule-making. Unlike the other sessions held, this meeting will be an opportunity for the stakeholder community to make statements about their opinions or ideas of various options for proposing for the allocation of rule-making.

So, EPA in the previous sessions had described several different potential options for this rule-making, and we're very eager to get some substantive feedback from the user community.

In terms of where we are in the process, as you well know, we are beginning to process the second round of applications for the critical use exemption. The next step in this rule-making is that the U.S. government will select a proposed option, and then you'll see that proposed option described in the federal register, probably in the

early winter, along with all the other options that we considered but did not propose. And there will be another opportunity for you to provide comment to us during the normal commenting period.

In November of 2003 the meeting of the parties will take place, and the parties will at that meeting authorize critical use exemptions.

And then finally, again in January we will be submitting our next round for nominations of critical uses.

So those are the major steps that are taking place related to the critical use exemption, that are coming up. Although today we are going to primarily be focused on the allocation role.

In terms of how today's meeting will run, I have four speakers who have signed in. If you'd like to speak and you don't hear your name, please let me know that.

I have Dave Riggs, representing the Western Raspberry Nursery Growers; Tom Krugman from the California Strawberry Commission; Neil Nagata, a California strawberry grower, and Reggie Brown from

the Florida Tomato Exchange. Are there other parties in the room what are interested in making comments at today's meeting?

Okay. I'm going to ask speakers to limit their comments to the allocation rule itself. There are a lot of issues regarding the critical use exemption that are of importance to all of us in this room. But today's meeting is to discuss the ideas and options that have been laid out, and other ideas and options that we should consider, particularly for the allocation rule. So please to limit your comments to the allocation rule itself.

If anybody would like to talk to me about other rules, I am more than happy to do so at any time. You can reach me at (202) 564-2651. That's my direct line.

Each speaker will have approximately ten minutes. Deanna Lekas from ICF Consulting is here to help monitor the time. She will give you a five-minute flash card, a 30-second flash card, and then a wrap-up to help you keep track of time.

This meeting will run until noon, or until all

the speakers have finished. Because we only have four registered speakers, I think we will be done earlier than anticipated. But I'm more than happy to stay here afterwards and discuss any sort of questions or issues that people would like to bring to my attention.

If you'd like to provide comments but are not speaking today, we will be holding the transcript open for a week, and you can provide us with comments in writing. You can e-mail those to me at: finman.hodayah@epa.gov. And if you can do that by 5:00 p.m. this coming Friday, August 22nd, we will make sure to include those in the transcript. And of course, I'm available at any time if you'd like to discuss the allocation rule-making.

Before we get started, I'd like to ask my government colleagues to introduce themselves to everybody in the room, and then I will call the first speaker.

MR. LAND: I'm Tom Land. Most of you knew me, and I'm the Chief of the Stratospheric Program

Implementation Branch in the Office of Air and Radiation.

CHAIRPERSON FINMAN: I'll just repeat their names in the microphone. I'll repeat your names into the microphone, so just stay where you are.

Marta Montoro, EPA, in Tom Land's Branch.

Other government colleagues? USDA?

Allen Jennings from USDA.

I think I saw somebody from--Paul Balzarac [ph] from the Office of Policy, Economics, and Innovation at EPA.

Anyone else from the federal government here? Okay. And we are expecting a colleague from the Office of Pesticide Programs at EPA to be here shortly.

So with that, why don't we go ahead and get started. I'd like to invite Dave Riggs to come to the podium for remarks. Thank you.

MR. RIGGS: You had all the right microphones working. Okay, my name is Dave Riggs. I represent the Western Raspberry Nursery Consortium. I'm also the Director of the Crop Protection Coalition. My

remarks this morning will be from the Raspberry Consortium, but I will make a few comments that I think are consistent with the positions of the Crop Protection Coalition.

I wanted to address my comments to three specific points. Number one, in any allocation model, who should be qualified to receive methyl bromide approved under the critical use exemption. Number two, I wanted to comment on what allocation method seems most workable. And number three, I wanted to comment on the issue of fines and penalties for errors or problems that occur in any allocation system.

Compared to most of the applicants, the application of the Western Raspberry Nursing Consortium is very small. But I think for all of us who put the time and effort into developing applications and going through the process now a second time, we strongly feel that preference should be given in the allocation process to companies that participated in applying for critical use applications and not made generally to

people that did not participate in the process.

We think it's both unfair and indispensable under some of the requirements of the Clean Air Act and the Montreal Protocol to allow material to go to people that did not participate in the application process.

Obviously, there were extensive man-hours, time and effort committed to developing these applications. In the case of the Raspberry Nursery Consortium, we don't represent all of the nurseries, only those that chose to participate. We did contact other raspberry nurseries and ask them if they wanted to participate, and they declined to do so. So it wasn't a question of people that didn't know or were uninformed. It was that people were unwilling to participate.

Now, the rule basically, as we recall, indicated confidential information could remain confidential. However, we were told basically that unless the public was able to scrutinize the data and information in the application, it would be very hard to approve the application. Therefore,

confidential and sensitive information on the business operations of these specific nurseries was publicly available to our competition. So, we think that's unfair as well.

When the agency determined the amount of methyl bromide that would be available to this sector, they used the acreage described in the application from the Consortium to determine a tonnage of methyl bromide available. But we represent maybe 60 percent of the Raspberry Nurseries. So, even though EPA and UNEP determined that it was a critical use, the acreage is only confined to that of the Consortium. So if you make the product generally available to all nurseries, you're seriously diluting the amount of methyl bromide that was determined to be available for a critical need.

I think with regard to whether or not it's allowable to provide material to people who didn't participate in the application, the Clean Air Act, and the Montreal Protocol all require that applicants make declarations and commitments with

regard to the effort that they're putting in to investigate alternatives; the commitment to utilize alternatives; the commitment to reduce emissions. And those that did not participate in the application didn't make any of those declarations or commitments.

So I think for all of those reasons allowing non-participants to piggy-back on the work of others is both unfair, and perhaps not allowable under the Montreal Protocol or the Clean Air Act.

With regard to the allocation models, I want to begin by saying that we're really not comfortable with any of the models. We don't think any of the three models that have been suggested take into account the complexity and the variance from industry to industry and sector to sector.

As we said before, we actually think that if you're looking beyond 2005 for several years, a more effective solution is to freeze the phase-out at some reasonable level.

But nonetheless, given the three options that have kind of been presented to us, I think it's the

position of the Raspberry Nursery Consortium and I think the Crop Protection Coalition that we prefer the QPS-like model. Number one, it's a proven system; it's simple and direct; and it effectively monitors the use by segment through the quarterly reporting of the manufacturers. It provides a way to give preference to the applicants, those who qualify in our recommendation would be to give them a CUE number, and as a approximation of what they're allocated per acre. And then that would give those who have a CUE number an opportunity to self-certify under that methodology.

So we think that's the simplest, most direct way to go.

The other models, the candlelight model, we think kind of duplicates the effort that's already been put in the critical use applications and shoves that duplication down to the farmer or to the individual user level. And we think that's highly complex and not the most efficient way to go.

And we think the auction system just adds a

completely new channel of distribution and cost to the system, which really benefits nobody.

So of those three choices, we do like the simple CPS-like model, with some preference given to the applicants.

The third point I wanted to comment on is that we think the fines that have been described for errors or problems in this process have been those that are the fines that were described in the Clean Air Act. And we think that's inappropriate. The Clean Air Act fines structure was really designed to deal with manufacturers, who knowingly or by error produced methyl bromide above the quantities specified or allowed by them under the Clean Air Act.

And fines of \$25,000 per kg, when you're talking about a small universe with a specific, defined number that they have to reach, may or may not be fair. But it's certainly was never intended to apply to a farmer who in good conscience believes he qualifies for a QPS or a critical use exemption, and then later finds out that he may not

have been, or that he made some error in the process.

I think FIFRA-like fines would be much more appropriate for users under this system. And so we would strongly urge that in your rule-making you provide some recommendation that suggests that the Clean Air Act fines are not appropriate for individual users under these circumstances.

I believe one of my colleagues calculated that the potential fine to a farmer for making an error in this regard would be upwards of \$300,000 to \$1 million per acre. And certainly that is not what the Clean Air Act was intended to do.

The last thing I'd like to comment on very quickly is the meeting of the parties in November, and this certainly isn't the forum to discuss the location of the meeting.

Going back to the Nairobi meeting, I think we're all very concerned that the meeting was moved from Bangkok because of concern about SARS, and then moved to Nairobi, which has got a different level of concern. Particularly with regard to the

allocation situation, we're not sure as an industry whether or not--and I don't know if you are--whether or not the Montreal Protocol will add additional restrictions to what method allocation you are allowed to use.

But we are certainly concerned that by having the meeting in Nairobi, it's going to be different for industry to participate in the meetings, and we would urge that the location of the meeting be changed.

Thank you.

CHAIRPERSON FINMAN: Thank you.

The next speaker on my list is Tom Krugman from the California Strawberry Commission.

I think I turned down the speaker too much. Could everybody hear the end of Mr. Riggs' comments?

MR. KRUGMAN: How's that? I'll speak up.

CHAIRPERSON FINMAN: Does everyone hear? Okay.

MR. KRUGMAN: Well, good morning. My name is Tom Krugman. I'm the Director of Industry Services for the California Strawberry Commission. And

joining me today is Mr. Neil Nagata, a grower from San Diego, who serves as an elected member on the Commission. The Commission is established under California law and represents the 600 growers, shippers, and processors of strawberries in California.

California produces 83 percent of the nation's strawberry crop, and this year's harvest estimated 131 million trays, or about 1.4 billion pounds has a farm-gate value of just about--

CHAIRPERSON FINMAN: I'm sorry, they can't hear you. So, is that better? No, a little more.

MR. KRUGMAN: Hello, hello. Is that better? How about that? Oh, I can hear myself too.

So I will present the industry's response to the proposed allocation models, and Mr. Nagata will present a model developed by the California strawberry industry that offers a fair, equitable, and simple solution to the contentious issue before us.

First I will address the QPS + Canada and the QPS + Action Models, and then the QPS-like model.

The ultimate model used to allocate methyl bromide is second only in importance to the availability of sufficient product to treat California's 28,000 acres of strawberries. The question of allocation should be considered within a system context. And by that I mean without knowledge of what quantity of methyl bromide will be allocated, a discussion on a model's adequacy is difficult at best. Insufficient supply will challenge the distribution efficiency of any model.

Both the QPS + Canada and the QPS + Action models have serious, unacceptable flaws. Both require the identification or creation of an agency to monitor the process, adding regulatory complexity and an incremental cost to regulatory environment that's already complex and very costly.

For California strawberry growers, 65 of which are small to medium sized farmers, farming less than 100 acres, any plan which would require the absorption of additional usage right costs on top of pre-harvest production costs, averaging almost \$17,000 per acre presents an undue financial

burden.

The QPS + Canada model requires the creation or identification of an agency to monitor the trading of use rights to ensure they are only used by those eligible and qualified to receive them, and to protect against the potential for windfall profits from the trading of those rights.

The QPS + Auction model also falls apart because purchases would be based solely on the depths of one's pockets and therefore the need to create a mechanism to prevent an individual or group of individuals from seeking to acquire those rights and holding them off the market to prevent legitimate use in critical situations. The costs of methyl bromide are high enough already. Why add an additional cost?

The free-market QPS-like model works if and only if attention is paid that the details of methyl bromide delivery to each sector and region that is the basis of the CUE nomination. An unmodified QPS-like model has fundamental deficiencies that doom it to failure like the other

proposed models. It does not define qualified users or provide a method of certifying growers' eligibility to acquire or use methyl bromide. It potentially allows access to methyl bromide to non-applicants.

Economics and the calendar would dictate where the product is delivered on a first-come, first-serve basis, without guaranteeing an eligible grower access to methyl bromide for demonstrated critical uses.

With that being said, a modified QPS-like model has the greatest potential to succeed because it is simple and does not require creation of any regulatory structure, relying instead on the records and infrastructure that already exist. And Mr. Nagata will address these issues in his presentation.

Finally, the California Strawberry Industry believes that only a model that is transparent to the manufacturers, distributors, applicators, growers, and regulators will be successful. Every effort must be made to minimize the imposition of

new regulatory bureaucracies, maintain the current distribution framework, and simply record-keeping requirements at all levels.

With a stated objective of following the KISS principle, that's "Keep It Simple, Strawberries," Mr. Nagata will present specific refinements to the QPS model that make it a practical solution to the allocation question.

Thank you.

CHAIRPERSON FINMAN: Thank you.

Mr. Nagata, California strawberry grower?

MR. NAGATA: Good morning. My name is Neil Nagata, and I'm a third-generation strawberry grower in San Diego County. I farm about 100 acres of strawberries. I've been elected by the growers in my district to represent their interests in the California Strawberry Commission. And I currently serve as the Chairman for the Regulatory and Strategic Issues Subcommittee.

The manner in which methyl bromide is ultimately allocated to our industry is of great interest to me, as my family's farm is primarily on

hillsides, where many of the alternative materials being considered are not effective due to the topography, soil type, and profile. It is expected that more production in California will shift to the hillsides, due to urbanization taking away the more desirable flatland. So what I'm experiencing today is just a snapshot of the future.

In addressing the panel this morning, I will focus the allocation scheme that is fair and equitable to all California Strawberry growers, regardless of individual circumstances. As with most regulatory issues, extensive government intervention tends to overly complicate matters. We propose to keep things as simple as possible, minimizing any new regulatory burden to the farmer, and to the agencies that would oversee the allocation process.

Mr. Krugman has just outlined what we believe are the key flaws to each model proposed by EPA. As he has indicated, a free-market model that utilizes the current distribution system, and does not add a layer of additional regulatory

bureaucracy has the greatest potential for success.

One of the key questions in any model is the definition of a user group, and how to qualify a grower to purchase methyl bromide. There is an inherent economic unfairness in any allocation scheme that is not region and sector specific due to the differences in the regulatory environment throughout the United States.

Our proposal, which we like to call the "QPS-Like + Local Allocation" option, assumes a best case scenario of a full, aggregate allocation of methyl bromide to the United States. It defines eligible critical methyl bromide users as those groups or organizations having submitted critical use exemption applications by sector and geographic region. This definition would eliminate from allocation consideration any non-applicant free-riders that had not considered their critical need enough to complete an application.

This approach would establish an inner and intra-sector allocation scheme. In inter-sector, each of the 16 sectors would be eligible for its

proportionate amount of methyl bromide as included in the U.S. nomination. In intra-sector, each defined user would be eligible for methyl bromide on a pro rata basis. If the Montreal Protocol allocates methyl bromide on a sector-by-sector basis, or the quantity is significantly less, then that it is included in the U.S. nomination, an entirely different situation will exist.

Once user eligibility by specific group was determined, a review of the County Argue Commissioner pesticide or restricted use permits during the year previous to the year of fumigation would identify qualified growers of record for that commodity within that region. Methyl bromide allocation would be at the level closest to the grower where current California state and county regulation structures exist.

Additional costs would be minimized through no new expanded regulatory requirements or development of a new over-arching agency, and the control and use of its sales would be a function of the existing relationship between the manufacturer,

distributor, applicator, and grower.

New entrants to the approved sector would be forced to use methyl bromide alternatives for at least one year, until they were growers of record. Non-applicant industries would also have to use alternative materials. Unused product within a sector would not be available to other sectors. These scenarios would help the United States meet its methyl bromide phase-out obligations.

Because our concept requires the participation of the state and county agencies, we presented our model to the California Department of Pesticide Regulations, and Monterey County Agricultural Commissioner for their comments and input. Both agencies supported the framework as outlined, and believe it is a feasible solution.

The California strawberries industry is committed to making the transition to methyl bromide alternatives for all but critical uses, which could be the occasional cleaning of fields of residual pests not eradicated by less efficacious alternative materials, on hillsides, and on soil

type variations.

If the California strawberries growers are to do their part in assisting the United States to meet their intelligence environmental obligations, we need financial assistance and technology transfer. Engineering hillsides to change the angle and slope, reconfigure drip systems to deliver materials better suited to broadcast distribution and controlling runoff are just some of the direct financial hurdles we cannot bear and remain competitive.

The existence of federal monies to support research into methyl bromide alternatives at the university level is appreciated, but it does not address the growers' need to access funds through an ASCS-type grant to make necessary structural changes on our ranches.

As the largest contributor to the multi-lateral fund, we believe that United States government has a similar responsibility to domestic agriculture. There is a major disconnect when funds are made available to international competitors to phase out

their methyl bromide use, but a similar commitment is not made to American farmers.

The California strawberry industry would like to acknowledge the efforts of the EPA, the USDA, and the State Department for assisting us in this critical use process. We know this has been difficult process, and appreciate your efforts.

And Mr. Krugman and I are available for comments or questions.

Thank you.

CHAIRPERSON FINMAN: Thank you. I notice that two colleagues from the Office of Pesticide Programs joined us. So I'd like to take a moment for you to introduce yourselves. Go ahead.

This is Jin Kim from the Office of Pesticide Programs at EPA. I have to repeat it for the court reporter.

Elisa Rim from the Office of Pesticide Programs.

Okay, I have one more speaker on my list. But before I call him, has the speaker from Weyerhaeuser joined us? Yes. And your name, ma'am? Amy

Shaffer from Weyerhaeuser. Thank you.

I'd like to ask Reggie Brown from the Florida Tomato Exchange, to come make comments. Thank you.

MR. BROWN: Good morning. I'm Reggie Brown, Executive Vice President of the Florida Tomato Exchange. And I want to make just a for example brief comments. We will follow these comments later next week with more formalized things. But a couple of points we'd like to make, as we have the opportunity this morning.

First of all, on the question of user group, I don't think there's any doubt in any grower's mind that I've talked to about the user group being confined to those folks that made application for a critical use. And the critical use application process warranted and merited that user having the privilege, if it so designated from the Montreal Protocol to have the right to use that product.

We are not an industry that is highly supportive of free-riders, and we think the user community is the group that should be entitled to use whatever allocation comes forward on behalf of

those applicants.

Secondly, the systems that we have been given the opportunity to look at. While we're happy with none of them, to be quite honest--and I don't think that's any surprise to any of you that propose the three systems in that they all have their fundamental flaws--but when it comes right down to it, if you have to make a choice between the lesser of three evils, we certainly believe that the QPS-like system with some modification to ensure that the user community is limited to those that in fact paid the piper and went through the process of making application, and made the hurdle, should be in fact those individuals enabled to access the QPS system.

The fine and penalty system, as the earlier speaker has mentioned, is a little bit ludicrous. It was designed initially for manufacturers. It has little or no purpose or application to a grower to has the potential to make an honest mistake that could cost him the farm, on a single acre. And that need to be addressed in the process to ensure

that we don't inappropriately use the system to put American agricultural producers out of business, when the system was never designed to do that to start with.

Lastly, we think the system needs to be equitable for those applicants that made application. It needs to be an efficient system, using the market place that has functioned quite well for a number of decades in moving the product, and it needs to be simple and unintrusive into American agricultural, that is faced with a highly competitive environment on an international basis. And if we done manage to make those hurdles, we will in fact jeopardize the systems in which American agricultural is able to produce foods when their commodities are in fact users of methyl bromide.

Like I said, we will follow these with some more comments. I also serve as the Chairman of the CPC, and we will follow with the some CPC comments later next week, as well.

Thank you.

CHAIRPERSON FINMAN: Thank you.

Amy Shaffer from Weyerhaeuser? Before she gets started, are there other people who would like to make comments today whom I've not identified?

MS. : [Off mike.]

CHAIRPERSON FINMAN: Anne Giesecke. Okay, thank you.

MS. : Sorry I came in late; there was a problem on the subway.

CHAIRPERSON FINMAN: Okay.

MR. : I would like to make a brief comment as well.

CHAIRPERSON FINMAN: Okay, hold on a second.

MR. : [Off mike.]

CHAIRPERSON FINMAN: It's not part of the formal agenda today, but after the meeting I'd be more than happy to answer questions, and I'll stick around for a while. Okay, Anne Giesecke, okay. Thank you, Amy.

MS. SHAFFER: Good morning. I'm Amy Shaffer with Weyerhaeuser Company. I'm the Federal Regulatory Affairs Manager there. I am speaking

for Weyerhaeuser, but our comments are in conformance with considerations from the American Forest and Paper Association and the other CUE applicants from the Forest Seedling Nursery sector.

I feel like I heard myself give my talk when the gentleman from the Tomato Growers got up and basically said we feel very, very strongly that the CUE applicants are the ones who should get the application, that should be done on a sector basis, and that whatever process needs to occur to facilitate that is the one that makes the most sense. Therefore, while as we agree, none of the three choices were particularly great, in our estimation, the QPS-like model with some modifications are definitely the ones that we think make the most sense.

They are simple. It is the least burdensome. And it is the one that will allow us to continue growing our millions of seedlings to ensure that we reforest the United States and the world.

We will be submitting as AFPA a set of written comments that go into great detail. But we wanted

to reinforce how important we think it is that the CUE applicants are the ones who should be allocated the methyl bromide and not anyone else within the system.

And that's my speech.

CHAIRPERSON FINMAN: Thank you very much.

Sorry about that. Anne Giesecke from the American Bakers Association.

MS. GIESECKE: Thank you.

Good morning, and thank you for the chance to be here.

The American Baker's Association represents the people who make bread and cake and cookies and crackers, that are mostly sold in the grocery store. And our concerns are primarily food safety and customer nutrition and preference.

The food safety issue has to do with FDA regulations on insect particles in products. And we're very concerned, for example, that the flour millers be allowed to continue effective fumigation, and that the bakers be allowed to effectively fumigate their facilities to keep the

insect part component of the bread to an absolute minimum.

This goes to customer nutrition and preference. If you buy a loaf of Italian bread or French bread, we know from customer research you do not lump black spots, particular insect parts, in that bread. It's neither aesthetic, nor does it add or subtract to your nutrition. But it's not appropriate.

And we have worked very hard to keep good food safety standards. And this product is particularly effective in allowing us to do that, particularly in older structures, where the substance penetrates into all of the crevices and parts of the building.

We would like to see in this case as simple and open a process as possible. Particularly to the benefit of smaller companies and users.

We like the QPS-like model best. We less like the + Canada model. And we oppose the Auction model, as we feel it would put the smaller companies and users at a distant disadvantage.

Thank you.

CHAIRPERSON FINMAN: Thank you.

I have one more speaker left on my list. Mr. McAllistar from Great Lakes. Are there other parties who are interested in speaking? Okay, I'd like to invite our final speaker to the podium. Thank you.

MR. MCALLISTAR: Thank you. I'd just like to make a few comments from the manufacturer's viewpoint. My name is David McAllistar with Great Lakes Chemical. We are a major methyl bromide manufacturer and registrant in the United States.

My comments echo those of most of the speakers this morning in that of the options presented, we think the QPS-like model is the most workable and certainly is something that has several advantages over the other proposals. So let me just mention a few of those.

One is that it uses a proven allocation system. In reality, since the 1998 freeze of methyl bromide production at the 1991 levels, manufacturers have been in effect allocating product this year and next year at the 30 percent of baseline level. So

the allocation based on, as some people have said, the existing distribution chain and the market system in place, has worked well up to this point, and we would like to see that continued to the extent possible.

I think all of the speakers have mentioned the desirability of giving preference to those who participate in the application process. We believe that in the QPS-like model with the careful definition of who would constitute a user, that need can be accommodated fairly simply.

A very important consideration is the distribution chain. As many of you know, methyl bromide typically goes from a manufacturer in bulk form to distributors who are most of the time located closer to the point of use where it's repackaged and then distributed further, sometimes directly to end-users, or perhaps there might be a dealer step in there. The QPS-like model allows for continuation of that distribution chain, without adding complexities that might be introduced by the other models, the Canada-like

model and the Auction model.

The documentation for the QPS-like model certainly at the end-user level would be substantially less burdensome, we believe, than the documentation that would be required under the Canada model, or the Auction model. We think that would be, as some have mentioned, a big advantage at the grower level to keep the documentation as simple as possible.

Furthermore, under the record-keeping reporting and tracking, since this model is based largely on the QPS model, and the QPS model system has been now in existence for a couple of years, by the time these critical use exemptions become available in 2005, we will have at least two more years under our belt of experience with the QPS system.

I think it's working smoothly now. The document flow seems to be going well, and we think having the critical use exemptions analogous to that would really simplify the process and lessen the confusion there.

Another aspect, perhaps from the agency's

standpoint is we think under the QPS-like model, compliance monitoring might be simpler, because in that case it would be focused on a relatively small number of producers and distributors primarily. Since the end-users would be self-certifying that the use for which they purchase the methyl bromide was a qualifying use, then I think the compliance monitoring might be much simpler in the QPS-like model system.

So for those reasons, we strongly believe that the QPS-like model is favored. We think that there are some modifications and additional provisions that need to be added to it to handle the situations that some of the speakers brought up this morning, and we certainly wouldn't be opposed to that. But overall, we think the QPS-like model certainly has advantages over the others that have been proposed.

Thank you.

CHAIRPERSON FINMAN: Thank you.

Are there any other speakers? Okay.

I'd like to thank everybody for coming to this

meeting. We will now conclude the formal portion of the meeting.

[Whereupon, at 9:48 a.m., the meeting was concluded.]

ADDITIONAL COMMENTS:

The comments that follow were received in writing following the meeting on August 15, 2003 (but on or before August 22, 2003) and are recorded here as part of the official record.

The following organizations submitted comments:

- Agricultural Resources Center
- American Forest & Paper Association
- International Paper Nursery and Orchards
- North American Millers Association
- Western Raspberry Nursery Consortium
- California Strawberry Commission
- Crop Protection Coalition
- Great Lakes Chemical Corporation
- Georgia Fruit and Vegetable Growers Association
- Hendrix and Dail, Inc.

AGRICULTURAL RESOURCES CENTER COMMENTS:

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 Agricultural Resources Center
 206 New Bern Place
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July 30, 2003

Dear Ms. Finman,

Thank you for affording us the opportunity to comment during EPA's stakeholder sessions on the allocation of Methyl Bromide under critical use

exemptions from the Montreal Protocol. Here in North Carolina, methyl bromide is used on a wide variety of crops, including berries, peppers, tomatoes, tobacco, Christmas trees, and in nurseries. A diverse group of North Carolina organizations and individuals are concerned about the ongoing use of methyl bromide due to both environmental and human health concerns. We are pleased with the aim of the methyl bromide phase-out under the Clean Air Act and the Montreal Protocol, but we are also concerned that the "critical use" exemptions allocation process may undermine the integrity of the phase-out.

At a recent stakeholder session at North Carolina State University, EPA representatives presented various possible scenarios for the allocation of methyl bromide to users under the critical use exemptions. We are concerned that EPA's approach ignores the import of the "critical use" designation, focusing instead on maximizing the use of exempted methyl bromide. EPA seems to be treating CUE methyl bromide as a commodity to be loosed on the free market, rather than a highly restricted chemical reserved for specific, "critical" uses as authorized under the Montreal Protocol. There was also no discussion of encouraging alternatives through methods other than financial disincentives (e.g., pricing some growers out of using the chemical). Therefore we would like to ask that EPA consider incorporating the following recommendations in crafting an allocation scheme for methyl bromide:

- The allocation process should harmonize with the aim of the phase-out; that is, EPA's stated goal and

strategic endpoint should be a total end to the use of methyl bromide, not just reduction in use.

- When allocations are made, they should not simply be based on historical use patterns, but priority should be given to growers based on actual need: where no viable alternative exists; and where concerted efforts at implementation of sustainable alternatives can be demonstrated.
- Any allocation scheme should contain a complementary program to assist small and large growers, with an emphasis on low-cost, low-impact IPM alternatives.

Thank you for your attention to our concerns. We hope that throughout this process, EPA keeps its focus on the ultimate goal of a total phase-out of harmful methyl bromide, and we look forward to hearing from you as this process moves forward.

Sincerely,

Fawn Pattison, Executive Director
Agricultural Resources Center

Carolyn Hess, Vice-President
Albermarle Environmental Association

D. Bouton Baldridge, Cape Fear Riverkeeper
Cape Fear River Watch, Inc

Tony Kleese, Executive Director
Carolina Farm Stewardship Association

Nancy C. Bryant, President
Carolinas Clean Air Coalition

Hope Taylor-Guevara, Executive Director
Clean Water for NC

Carrie Oren, Executive Director
Conservation Council of NC

Blake Pendergrass
Farm Labor Organizing Committee (FLOC)
North Carolina

Lori Fernald Khamala
National Farm Worker Ministry (NC)

Russel Rivera, New Riverkeeper
New River Foundation

Burt Millette
PenderWatch & Conservancy

AGRICULTURAL RESOURCES CENTER ADDENDUM COMMENTS:

RE: Methyl Bromide CUE allocation process

This is an addendum to the letter submitted to you by a coalition of North Carolina health and environmental advocates in order to discuss our suggestions for the MBr allocation scheme in more detail. Thank you very much for your consideration of our input during the stakeholder session of the forthcoming rulemaking process on critical use exemptions from the methyl bromide phase out. Our suggestions are listed below, along with a more detailed explanation for each.

1. The allocation process should harmonize with the aim of the phase-out; that is, EPA's stated goal and strategic endpoint should be a *total* end to the use of methyl bromide, not just reduction in use.

We are particularly concerned that the process of granting exemptions will stall the phase-out at an indefinite low-level cap, rather than ending the use of methyl bromide altogether. Both the Montreal Protocol and the Clean Air Act provide for a phase-out of the chemical out of a long-term concern for human and environmental health; that is, in order to end the destruction of the ozone layer along with accompanying health risks. In order to assure the success of this ultimate goal, EPA must reduce each

year the total amount of CUE methyl bromide that is allocated to end-users, until a final level of zero methyl bromide use is achieved.

2. When allocations are made, they should not simply be based on historical use patterns, but priority should be given to growers based on actual need: where no viable alternative exists; and where concerted efforts at implementation of sustainable alternatives can be demonstrated.

EPA's current proposed allocation frameworks include "self-certification" on the part of the MBr user. Whether MBr users certify themselves, or certification is carried out by EPA or a third party, it is crucial that users meet specific criteria in order to qualify for consideration. In all cases, EPA should be up to data on available MBr alternatives, especially non-chemical or IPM alternatives, and the progress of development of any new technologies. Users who have reasonable alternatives available to them should *not* be granted MBr allocations. Likewise, users who can demonstrate concerted investment in alternatives, but who have not yet been able to implement alternatives successfully, should receive higher priority in allocations than users who may indeed have a "critical" need, but cannot demonstrate any effort at implementation of alternative practices or chemicals.

3. Any allocation scheme should contain a complementary program to assist small and large growers, with an emphasis on low-cost, low-impact IPM alternatives.

In order to facilitate a rapid and successful

transition to methyl bromide alternatives, EPA should cooperate with USDA and other agencies in assistance to growers with implementation of alternatives. Rather than enabling long-term dependence on methyl bromide, or on highly toxic replacement chemicals like chloropicrin, such programs should emphasize non-chemical alternatives such as solarization, disease-suppressive compost, steam, hot water, hydroponics, and other low-input methods. A well-coordinated program could divert a significant number of MBr CUE applicants into alternatives program, thereby reducing the regulatory burden and hastening the ultimate phase-out of methyl bromide.

We are grateful for the opportunity to comment on this process. Many interest groups share the Montreal Protocol's goal of ending the use of methyl bromide and the destruction of the ozone layer. We appreciate EPA's willingness to consider our

suggestions as the agency evaluates all possible options for achieving this outcome.

AMERICAN FOREST & PAPER ASSOCIATION COMMENTS:

August 15, 2003

Dear Ms. Finman:

On behalf of the American Forest & Paper Association (AF&PA) and critical use exemption applicants for methyl bromide in the forest nursery sector category, we appreciate the opportunity to submit comments on the preliminary allocation systems developed and discussed by EPA at various

workshops this summer. AF&PA and its partners strongly support the "QPS-Like Model" that guarantees a quantity of Mb for each seedling nursery that applied for directly or as part of a "group" critical use exemption application. This approach is fair and cost-effective. It also minimizes EPA administrative costs and user burdens far more than other approaches.

The AF&PA is the national trade association of the forest and paper industry and represents more than 240 member companies and related associations that engage in or represent the manufacturers of pulp, paper, paperboard and wood products. America's forest and paper industry ranges from state-of-the-art paper mills to small, family-owned sawmills and some 9 million individual woodlot owners. Over the years we have worked very closely with the Auburn University Cooperative and its staff on methyl bromide technical, scientific and economic issues including the implications of its complete phase-out in January 2005.

The Preferred QPS-Model Approach

As noted above, AF&PA strongly supports a modified QPS-Like Model. As EPA acknowledged at the workshops and in the handouts, this model approach contains the least new regulation, has the least burden and is targeted at the sector level. In addition, the U.S. government based the national application to the TEAP on quantities requested in sector applications. Therefore, using a sector-specific distribution and allocation is consistent with the TEAP process and the U.S. submission.

A major concern with the QPS-Like Model proposed

by EPA is the distribution of Mb allowances to the producers/importers. The forest industry believes a more efficient and effective system is to allocate the Mb allowances to the critical use applicants. For example, a Cooperative that submitted an application for its members would receive the Mb allowances. The Coop would then allocate the supply to its members based on historical uses. This system reflects how the Cooperative initially requested a critical use exemption quantity. If the ultimate quantity provided is less than the quantity requested in the CUE, then the Coop would prorate the amount back to the members.

By utilizing this approach, every member that participated in the critical use exemption application would be entitled to some quantity of methyl bromide. If the allowances were held by the distributor, then it would be purchased on a first-come/first-serve basis that could result in some users not obtaining any Mb. We believe that result to be unfair. Additionally, since it was the CUE applicant that devoted the time, money, effort and resources to document methyl bromide quantities needed the system should reward the CUE applicants by allocating Mb quantities directly to them.

As EPA stated in the workshops, this model approach minimizes the reporting burden compared to other approaches. As a slight variation to the QPS-Like Model proposed by EPA, we believe it to be reasonable for the Mb users, as Coop members, to submit quantities used directly to EPA as well as to the Coop. Under the QPS-Like approach, producers/

importers and distributors/applicators would report annually to EPA on methyl bromide bought and sold. If necessary, individual users could report directly to EPA on Mb use to track trends. For forest nursery operations, they must be state certified and are inspected. While these certification systems are not designed for on-the-ground verification and compliance with the critical use exemption, they do function as important environment/health/safety management systems.

For the Coop member/user to obtain methyl bromide, the distributor/applicator must have verification that the user is eligible. An allowance would be issued by the Cooperative to the user. The user would in turn present the allowance to the distributor documenting user eligibility.

In the event that the requested amount is less than the supply, the excess Mb could be made available to other members of the group or to seedling nurseries that did not participate in the CUE. In other words, the CUE applicant should be eligible to sell these "credits" to other CUE applicants within the sector. If there are no buyers within the sector, the "credits" could be sold outside the sector. However, if the CUE applicant does not use its full allocation during a particular year, the applicant should have the option of carrying a "credit" amount forward for use in the following year.

QPS-Like Model Plus Canada-Like Model

The additional regulations imposed through the Canada-style system would create too much paperwork

and likely cause delays on the user community's timely access to methyl bromide. Individual user reporting and seeking authorization from EPA to use methyl bromide is too burdensome. The one element of the Canada-like system that maybe necessary to adopt is the monitoring of trading within and outside the sector. However, this could also be accomplished by the distributor since they are required to annually report to EPA the amount of methyl bromide bought and sold.

QPS-Like Model Plus Auction Model

AF&PA and its affiliated organizations strongly oppose the enactment of this system. It could easily lead to the highest bidder purchasing the total supply of methyl bromide and making it unavailable to individual users at a reasonable price. As EPA indicates, this system would take considerable time to develop and likely would not be ready for use by the January 1, 2005 phase-out.

Additional Comments

The phase-out of methyl bromide and enactment of a critical use exemption is an extremely complex process. With sixteen individual industrial sectors representing various uses and conditions, there must be recognition by EPA that some sectors are well-equipped to manage the methyl bromide allowances and distribute to their members on a fair and equitable basis. For example, the forestry nursery sector may be well suited to manage the allotment. In many cases, this could be the most simple, fair, equitable and easy to track system available.

In instances where there may be violations of

the methyl bromide critical use exemption regulations, AF&PA believes it is critical that any penalties and enforcement be based on the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Using the Clean Air Act enforcement and penalty system for unintended and minor violations would impose extreme monetary consequences that could result in farm, nursery and other landowner closures. Therefore, AF&PA recommends that FIFRA be used as the compliance and enforcement statute.

Finally, it is important that the EPA issue this rule in a timely fashion. For manufacturers, distributors, applicators and users to prepare for the critical use exemption, the EPA should strive to promulgate final regulations by September 2003.

Thank you for the opportunity to submit comments on this critical rulemaking process. The use of methyl bromide in the forestry community is critical to the practice of sustainable forestry and promoting a healthy and vigorous forest resource base.

Respectfully,

Mitch Dubensky, Director
Forest Policy

INTERNATIONAL PAPER NURSERY AND ORCHARDS COMMENTS:

George Lowerts, PhD
Forest Resources Building
Manager, Nursery Productivity
Nurseries & Orchards

Supertree Seedlings

August 21, 2003

Dear Ms. Finman:

Thank you so much for the opportunity to submit

comments on the preliminary methyl bromide allocation rules presented by the EPA at several stakeholder meetings this summer. At these meetings the EPA presented three possible rules: QPS Like Model, QPS Like Model Plus Canada Like Model, and the Auction Model. None of these models are perfect.

We do not support the QPS Like Model Plus the Canada Like Model or the Auction Model. The former model creates additional regulation for both the stakeholder and the EPA, and the latter model provides an opportunity for someone with strong financial resources to "corner" the methyl bromide market.

The QPS Like Model is acceptable due to fewer additional regulations but this model will require some revisions. This is to be expected since this is the first year of this process for both the EPA and stakeholders. We suggest the EPA develop a rule following the QPS Like Model with the following changes:

1. A sector-specific distribution and allocation of methyl bromide is required.
2. Only those cooperatives, consortiums, and individuals submitting a CUE within any sector will be eligible to receive methyl bromide allocations.
3. Within the forest seedling sector, methyl bromide will be allocated to CUE holders. A CUE holder, such as a cooperative, will then allocate methyl bromide to the members represented by that CUE. If a shortage of methyl bromide exists, the CUE holder could then allocate methyl bromide among

members based on historical use.

4. Producers or distributors of methyl bromide should not be eligible to hold methyl bromide allocations. This could result in a "first-come, first served" allocation system preventing some CUE members from receiving methyl bromide.
5. CUE members would submit the quantity of methyl bromide used to both the EPA and the CUE holder such as a cooperative.
6. In order for a cooperative member to use methyl bromide, the CUE holder would issue an allowance to the member. The member would then present the allowance to the methyl bromide distributor.

The discussions at the August 15, 2003 stakeholder meeting in Washington revealed that any allocation rule must be flexible to accommodate the different structures of cooperatives and consortiums contained within each sector. In addition, the penalties imposed for unintended and minor violations of methyl bromide use would result in severe financial impact under the Clean Air Act. The Clean Air Act was not intended to be applied to agricultural systems but rather to industrial emitters. We believe the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) should enforce methyl bromide use violations.

Thank you again for the opportunity to submit comments on the proposed methyl bromide allocation rules.

Sincerely,

George Lowerts
Mgr., Product Development
International Paper

Nursery and Orchards
P.O. Box 1391
Savannah, Georgia 31402

NORTH AMERICAN MILLERS ASSOCIATION COMMENTS:

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Washington, DC 20024
ph(202)484-2200 fax(202)488-7416
www.namamillers.org

August 21, 2003

Sent via electronic mail to finman.hodayah@epa.gov

Dear Ms. Finman:

This letter is in response to the agency's request for comments on the allocation of methyl bromide under the critical use exemption (CUE) process.

The North American Millers' Association (NAMA) has 45 member companies operating 170 wheat, corn, oat and rye mills in 38 states and 150 cities. Its membership represents about 95% of the total U.S. capacity of more than 160 million pounds of product each day.

NAMA makes these recommendations:

1. Methyl bromide allocated as a result of NAMA's CUE application should be made available only to NAMA member companies, because that would be:

- a. Appropriate - EPA should not allocate methyl bromide to companies whose attempts, if any, to adopt alternatives are unknown. Further, NAMA does not want the responsibility of speaking for companies about whose operations we know nothing.
- b. Fair - NAMA extended considerable resources in the development of its CUE application. The entire industry has been well aware of the approaching

ban on the fumigant. Companies that chose not to participate in the creation of the CUE application should not be rewarded by the agency when the CUE is granted.

2. We support the comments of the Crop Protection Coalition, and its preference for a "QPS-like" model of allocation.

The milling industry has worked hard to develop and adopt alternatives, and has already reduced its usage of methyl bromide by about 60 percent. However, the remaining methyl bromide used by the milling industry is of critical importance in ensuring our food products are wholesome and produced in a sanitary environment.

NAMA appreciates the opportunity to offer these comments, and looks forward to continued cooperation with EPA in creating a feasible and appropriate CUE process and to the allocation of methyl bromide that results from it.

Sincerely,

James A. Bair

WESTERN RASPBERRY NURSERY CONSORTIUM COMMENTS:

Western Raspberry Nursery Consortium
110 Chase Lane
Aptos, California 95003

Dear Mr. Land and Ms. Finman:

The purpose of this letter is to provide comments to the agency regarding the method of allocating methyl bromide for approved critical uses under the Clean Air Act and the Montreal Protocol.

The Western Raspberry Nursery Consortium would like to respectfully submit comments on two issues: 1) Who should have access to methyl bromide approved for a given sector; 2) What administrative method of allocation is most workable. We also feel that the Clean Air Act penalties are not appropriate for enforcement under this rule.

The Western Raspberry Nursery Consortium represents four nursery operations that grow the planting stock for a large percentage of commercial raspberry growers in the Pacific Northwest, California and Mexico. The Consortium was formed specifically for the purpose of gathering the enormous amount of data and funding the cost of completing the application for a Critical Use Exemption (CUE) under the Clean Air Act (CCA) and the Montreal Protocol. Other raspberry nurseries were contacted about participation and information about the Critical Use application process was widely known within the nursery industry. However, others raspberry nurseries did not participate in the preparation of this application nor did they submit an application of their own.

Therefore, the Western Raspberry Consortium feels that to allow methyl bromide approved under the CCA and Montreal Protocol to be distributed to the entire industry is unfair and indefensible under the requirements of the Act and the Protocol.

- The Consortium has now completed applications in 2002 and an update in 2003. The first application was voluminous, with many pages of spreadsheets, narratives, economic and financial

data requiring extensive man-hours to compile research and document. The 2003 "update" was significantly modified to provide information demanded by the Methyl Bromide Technical Options Committee (MBTOC) of the Montreal Protocol. While much of this information was provided in the 2002 application, the form and substance was sufficiently different that the "update" required almost as many man-hours as the initial application.

For example, The Consortium alone completed the extensive review of the literature required in the application, by the CCA and MBTOC. Because of the small size of the raspberry nursery segment, little direct research has been conducted for this commodity. Therefore, The Consortium had to review countless studies which were relevant to the commodity and provide the agency with a meaningful extrapolation to finding and their implication to the raspberry nursery industry.

- In addition to the man-hours required to complete the application, The Consortium was required to submit operational costs, income and performance data. Much of this information is of a sensitive if not confidential nature. While the Act provides that such data can remain confidential in the application process, The Consortium was advised by EPA, that unless such data was available for public scrutiny, approval of the application would be difficult. As a result, the Consortium felt compelled to allow confidential information included in the application to be posted on the agency's website.

Because The Consortium represents specific nurseries and not the entire industry as an aggregate, disclosure of sensitive operational data, provides information to competitors who chose not to participate in the application process and who were not compelled to provide such information.

- In determining the amount of the methyl bromide to nominate to the Montreal Protocol for the raspberry nursery sector, the agency calculated only the tonnage necessary for the acreage identified in the Western Raspberry Nursery Consortium application, only the acreage represented by The Consortium. To allow access to that amount of methyl bromide to the entire industry seriously dilutes that which was approved. Both EPA and MBTOC have determined that the need for methyl bromide in the raspberry nursery setting is indeed critical. It doesn't make sense to conclude that the need is critical, but dilute the amount of material available to an insufficient level.
- The CCA and the Montreal Protocol require that applicants for critical use exemptions must show, not only that there are no technically and economically feasible alternatives for methyl bromide, but they must also make disclosures and commitments about alternatives research, utilization of alternatives and emissions reduction. Those who chose not to participate in the application have not made any commitment

to conduct research, utilize alternatives or reduce emissions. Therefore, it is indefensible under the Clean Air Act and the Montreal Protocol to allow access to material to users who have not made the minimum commitments required.

- Allowing non-applicants to piggy back on an already approved application after the fact is not sufficient recognition of the time, effort, commitments and disclosures of the applicant.

Regarding the method of allocating methyl bromide approved for the sector, the Consortium supports the use of the QPS model. Any allocation method should be clear simple, easy to administer and not had extraordinary costs to the system. The QPS Model provides the following advantages:

1. Uses a proven allocation system. The QPS model in use is simple direct and effectively monitors the use by segment through the quarterly reports provided by the manufacturers.
2. Provides a simple way to give preference to participants in the application process. Users with the greatest need for a continued supply of methyl bromide applied for Critical Use Exemptions through the process established by EPA in 2002. The cost and complexity of the application process effectively limited participation to only those users with bona fide needs. Providing applicants with a CUE number and allocation per acre, would provide applicants and manufacturers with a simple parameter for self certification, monitoring and reporting.

3. Maintains the current distribution chain. By assigning CUE allocations to producers, the proposed QPS Like system will maintain the current distribution chain for methyl bromide. The current distribution system is highly efficient. Other systems proposed by the EPA, where allowances would be assigned to users or user groups, would disrupt the continuity of this process, risking the integrity, stability, and safety of the supply chain. The Canada system adds complexity and costs to users, manufactures and regulatory agencies who must administer them. The Auction method adds a completely artificial additional cost.
4. Minimizes documentation for users. As noted above, providing approved applicants with a CUE number and an estimated tonnage allowed per acre provides a simple self certification method. In the quarterly reports already required of manufacturers, the QPS model would be easy to report and easily monitored by the agency. Under the Canada model users would be required to compile or provide any historical use information to establish a baseline use quantity. This is a duplication of the application process forced down to individual users which is unnecessary and burdensome.
5. Simplifies record keeping, reporting, and tracking. By using a record keeping and reporting system based largely on the existing system for QPS exemptions, the QPS Like model would be much simpler than the other systems

proposed by EPA. The QPS system works smoothly, and will be very familiar to all entities in the distribution chain by 2005 when CUEs will first become available. The Auction and Canada Like models would impose significant additional record keeping, reporting, and tracking burdens to users, manufacturers and regulatory agencies at all levels with no additional benefits. Finally, the other proposed systems will require significant resources for development, testing and maintenance. In fact, EPA has said that it is unlikely that the "Auction" or "Canada-Like" models could be ready for use when CUEs first become available in 2005, and that the "QPS Like" model would be used for a year or two. Adopting the QPS Like model would avoid this potentially confusing change in procedures.

The Consortium strongly encourages EPA to adopt the "QPS Like" model with an additional provision to limit CUEs to those entities participating in the application process for inclusion in the proposed rule to be put forward later this year. This model is the simplest for both the regulated community and for regulators, encourages compliance by use of a familiar and proven system of record keeping and reporting, and maintains the efficient distribution system that has developed for methyl bromide.

Finally, the Western Raspberry Nursery Consortium urges the agency to support a change in the current structure of fines related to errors under the Clean Air Act as they would be applied under this rule.

We recognize the need for discipline and enforcement for abuse of the CUE and QPS self certification models. However, the current level of fines provided in the Clean Air Act is draconian and inappropriate for the purpose of enforcement under any allocation model. In the stakeholders' workshops conducted in June, the agency noted that the fines for errors, intentional or not, in self certification would be fines defined in the Act - \$25,000 per kilogram. The potential jeopardy under this scenario is in the range of one million dollars per acre.

Such fines were not anticipated in the Clean Air Act nor was it ever anticipated that such fines would accrue to end users. The Act seeks to enforce production limits on manufacturers which are clearly established and defined. Similar fines on end users for potentially inadvertent, small errors are completely out of proportion. In addition, since total production is capped and enforced by the Act, applying similar fines to distributors or end users under either QPS or CUE exemptions is duplicative.

Finally, users and distributors in good faith and based on somewhat uncertain guidelines issued by the agency are certifying that they qualify for QPS exemptions and eventually CUEs. Definitions of both QPS and CUEs are evolving, so users and distributors could find themselves at enormous risk through no fault of their own. Again, the fines defined under the Clean Air Act were not designed for this eventuality and are out of proportion.

In summary, the Western Raspberry Nursery Consortium recommends that the agency rule to be

issued later this year should give strong preference to applicants in access to material approved, utilize a simple QPS model and include a recommendation to modify enforcement mechanisms and fines associated with errors.

Respectfully submitted by,

David R. Riggs
Western Raspberry Nursery Consortium

CALIFORNIA STRAWBERRY COMMISSION COMMENTS:

California Strawberry Commission
P.O. Box 269
Watsonville CA 95076-0269
ph(831) 724-1301 fax (831) 724-5973
<http://www.calstrawberry.com>

August 22, 2003

Dear Ms. Finman:

On behalf of the California Strawberry Commission, the attached comments on proposed methyl bromide allocation models under the Critical Use Exemption process summarize our position on development of a model that is simple to implement and equitable to growers.

We oppose any model that adds additional regulatory requirements, new agencies, or compliance costs to a production environment that is already complex and costly for California's strawberry growers. Every effort must be made to minimize the imposition of new regulatory bureaucracies, maintain the current distribution framework, and simplify record keeping requirements.

The California strawberry industry supports a modified QPS-like model that defines users, certifies

eligible growers, uses existing regulatory structures, and can be characterized as "QPS-like + Local Allocation".

Because our proposal requires the cooperation of state agencies, we discussed it with the California Department of Pesticide Regulation and the Santa Cruz County Agricultural Commissioner, neither of which identified any particular problems with the framework.

Methyl Bromide Users Defined

Methyl Bromide users should be defined as those specific groups or entities that submitted a Critical Use Exemption (CUE) application within one of EPA's sixteen sectors. This would eliminate any free-riders who, as a result of either the complexity or cost of completing an application, failed to provide required information to the EPA, and thus, have not demonstrated their critical need.

Growers of Record Certified

A Review of County Ag Commissioner pesticide use or restricted material permits during the year prior to the year of intended fumigation would certify a grower of record for that commodity within the defined user group. Methyl bromide allocation would be controlled at a level closest to the grower where current state and local regulatory structures exist.

Regulatory Simplicity Provided

Through the use of historical records maintained at the county level, the grower would not be burdened with additional record keeping requirements. New state or local compliance agencies would not be required, providing regulatory simplicity.

Aggregate Allocation

The California Strawberry Commission requests the EPA to continue to press for allocation of methyl bromide to the United States in an aggregate amount, rather than on a sector by sector, or user by user basis. This approach will allow the proposed "QPS-like + Local Allocation" model to function in a fair and equitable manner that is transparent to all participants in the CUE process.

Sincerely,

Rodger Wasson
President

Cc: Jean-Mari Peltier, Counselor to the Administrator
on Agriculture Policy

Tom Land, Chief, Stratospheric Program
Implementation Branch

CROP PROTECTION COALITION COMMENTS:

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Via E-mail

Dear Ms. Finman:

On behalf of the Crop Protection Coalition (CPC), an organization representing methyl bromide users, I want to submit the attached comments on EPA's proposed allocation system for Critical Use Exemptions (CUEs) for methyl bromide.

Representatives of CPC have attended all of the stakeholder meetings EPA sponsored to present the

various options it is considering for administration of the CUEs when they become available in 2005. We found these meetings valuable and informative, and appreciate EPA's openness in the process.

We continue to be strongly and fundamentally opposed to the unnecessary burden that the CUE process places on methyl bromide users, and are further concerned about the inherent unfairness of other nations (some of which may be competitors of U. S. growers) deciding which tools will be available to combat pests in the U. S. agriculture and food processing industries. Nevertheless, we understand EPA's obligations to implement the provisions of the Montreal Protocol. Based on our discussion with the methyl bromide registrants, the methyl bromide manufacturers have advised that they are ready to cooperate with EPA in any way possible to develop and implement an allocation management system that is, to the greatest extent possible, equitable, efficient, and simple.

To this end, and as explained in the attached comments, we believe the "QPS-Like" model should be adopted for administration of the CUEs among the proposals identified to date. This model is the simplest for both the regulated community and for regulators, encourages compliance by use of a familiar and proven system of record keeping and reporting, and maintains the efficient distribution system that has developed for methyl bromide. In addition, we strongly encourage EPA to limit the availability of methyl bromide allocated under the CUE to those persons or organizations that participated in the CUE application

process.

If the "QPS-Like" model is selected as the appropriate approach, then the Agency must provide certain specific information to the user community to make certain that the user can determine whether the CUE is available and, if so, at what level. Consequently, the Agency should adequately describe each of the 16 sectors which the Agency has used in assembling the CUE nomination package to the Parties to the Montreal Protocol. The amounts allocated to such sector, if any, should be specified. Further, the Agency should publicly advise which associations or groups or individuals are within such sector, and who is a contact for that sector. There may be a need for users in a particular sector to coordinate and EPA should take that into account in developing an allocation system.

In addition to the foregoing, there are two additional points that should be considered. The first concerns the timing of the issuance of a final rule relating to allocation of methyl bromide. Such final rule should be in place by the end of the summer of 2004 so that affected persons can have an adequate amount of time to assure that the logistics associated with implementing such a program have been thoroughly considered and addressed. To meet this time constraint, the Agency should consider the issuance of an interim final rule on allocation. In our perspective, it is important that the program be ready to proceed on January 1, 2005 consistent with the phase-out date.

The other issue to be raised concerns enforcement penalties and their applicability at the user level.

In our opinion, users should not be held accountable under the enforcement provisions of the Clean Air Act if methyl bromide is applied incorrectly and the user was having the product applied under the good faith belief that the exemption was applicable to them. Rather, such user should only be held accountable under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The fines contemplated under the Clean Air Act were not intended to apply to thousands of methyl bromide users. Such fines could exceed hundreds of thousands of dollars per acre and could cripple production agriculture.

We were encouraged by EPA's strong defense of the U. S. CUE nomination package at the recent Open Ended Working Group (OEWG) meeting. In particular, we agree that granting the U. S. nomination as an aggregate amount rather than amounts designated for each of the 16 sectors would greatly increase the flexibility and decrease the complexity of administration of the CUE allocations. We hope EPA will continue to press strongly for this approach during further CUE negotiations under the Montreal Protocol. However, as noted above, we still feel very strongly that the chemical should only be made available under the CUE to those persons who submitted a CUE application and up to the level of their application. If a person did not participate in the process, they should not enjoy the benefit of the exemption.

We also believe that the Agency should lead an effort to convince its counterparts domestically as well as internationally that a simple extension of the phase-out under the Montreal Protocol should strongly

be considered by the Parties to the Protocol. This would help reduce the substantial burden that is created by a CUE approval process for the regulators as well as the affected community. In view of the substantial reductions of methyl bromide consumption that have in fact occurred from the 1991 baseline levels, we believe that such a straight forward and simple approach has much merit.

In the absence of such a change to the Protocol phase-out requirements, we look forward to a CUE allocation process that meets the regulatory needs of EPA, and ensures to the greatest extent possible, given the burdens of the CUE process, the efficient and equitable distribution of CUEs to methyl bromide users.

Very truly yours,

Edward M. Ruckert
Counsel
Crop Protection Coalition

CC: John Pemberton
Adam Sharp
Jean Mari Peltier
Tom Land

CROP PROTECTION COALITION ATTACHMENT COMMENTS:

Comments on Critical Use Exemption Allocation Proposal

Introduction

Following EPA's stakeholder meetings to receive input on proposals for administration of Critical Use Exemptions (CUEs), the Crop Protection Coalition (CPC) (representing users for both pre-plant and post-harvest applications) reviewed the options presented. What follows, therefore, we believe is representative of the views of the methyl bromide user community on the

appropriate allocation scheme to be followed.

"QPS Like" Model

For the reasons discussed below, we believe the "QPS Like" Model with slight modification is, under the circumstances, the best model for administration of the CUEs.

Uses a proven allocation system

Since the 1998 freeze of methyl bromide production at 1991 levels, methyl bromide, producers and distributors have, in effect, allocated available product to meet demands of applicators and users. The distribution system should be capable of accommodating the additional burden created through the CUE allocation process. Once methyl bromide quantities are available, the traditional distribution channels should be relied on.

Provides a simple way to give preference to participants in the application process

Presumably, those users with the greatest need for a continued supply of methyl bromide applied for CUEs through the process established by EPA in 2002. The cost and complexity of the application process did limit participation. In addition, applicants were required to provide extensive and at times, confidential information on their operations, to give evidence of efforts to reduce emissions, and to commit to conduct research on alternatives. Since those not participating in the application process did none of these things, their continuing need for methyl bromide cannot be verified. Therefore, EPA should limit the availability of exempt product to only those entities that participated in the application process. This could be easily done in the regulation by defining

"user" as a person who filed an application for CUE in one of the sixteen sectors defined by EPA or who is part of an association or organization that filed an application on such person's behalf.

Maintains the current distribution chain

By assigning CUE allocations to methyl bromide producers, the proposed "QPS Like" system will maintain the current distribution chain for methyl bromide. Typically, methyl bromide producers ship product in bulk to repackaging/distribution points in areas of highest use. At these repackaging locations, methyl bromide from bulk containers is packaged into cylinders for distribution to dealers or end users. This system, which has developed over decades of use, minimizes transportation costs and allows the repackagers to formulate the specific products that are needed for local or regional markets. Also, distributors can maintain the inventory necessary to promptly provide the needed product.

Under the other systems surfaced by EPA, allowances for methyl bromide would be assigned to users or user groups. The allowance holder could then place an order with a dealer who would then order the product from a producer. This would create the potential to bypass the critical distributor line in the chain. This would create confusion and disrupt the entire process. In such circumstance, there would also be little incentive for distributors to maintain inventories to meet the needs of users.

Minimizes documentation for users

Under the "QPS Like" Model, users would not be required to compile or provide any historical use

information to establish a baseline use quantity. Compiling such information could be a significant burden, particularly in cases where market or weather conditions have caused treated acres to vary over the averaging period.

The "QPS Like" Model would only require users to maintain records or information substantiating that methyl bromide acquired for exempt uses was, in fact, used for those purposes.

Simplifies record keeping, reporting, and tracking

By using a record keeping and reporting system based largely on the existing system for QPS exemptions, the "QPS Like" Model would be much simpler than the other systems proposed by EPA. The QPS system seems to be working smoothly, and will be very familiar to all entities in the distribution chain by 2005 when CUEs will first become available.

In contrast, the other options proposed by EPA would greatly increase the complexity of record keeping, reporting, and tracking. The real-time tracking database proposed for the "Auction" or "Canada-Like" models would require significant resources for development, testing and maintenance.

Also, it seems that compliance monitoring would be much more difficult with the Auction or Canada-Like models. With the "QPS Like" Model, compliance issues are likely to be concentrated among four producers and a few distributors; with the other models, hundreds of users and applicators would also be involved.

Overall, the Auction and Canada Like models would impose significant additional record keeping, reporting, and tracking burdens with no additional benefits.

Conclusion

EPA should assure that any CUE allocation management system established must be equitable, efficient, and simple to the maximum degree possible under the circumstances. For the reasons discussed above, we strongly encourage EPA to adopt the "QPS Like" Model (with an additional provision to limit CUEs to those entities participating in the application process) for inclusion in the proposed rule to be put forward later this year. This model is the simplest for both the regulated community and for regulators, encourages compliance by use of a familiar and proven system of record keeping and reporting, and maintains the efficient distribution system that has developed for methyl bromide.

GREAT LAKES CHEMICAL CORPORATION COMMENTS:

Great Lakes Chemical Corporation
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P.O. Box 2200
ph(765)497-6100 fax(765)497-5400

August 21, 2003

Dear Ms. Finman:

On behalf of Great Lakes Chemical Corporation (GLCC), I am pleased to submit the attached comments on EPA's proposed allocation system for Critical Use Exemptions for methyl bromide.

Representatives of GLCC have attended several of

the EPA sponsored stakeholder meetings to present the various options it is considering for administration of the CUEs when they become available in 2005. We found these meetings valuable and informative, and appreciate EPA's openness in the process.

We remain concerned and fundamentally opposed to the unnecessary burden that the CUE process places on methyl bromide users. We are further concerned by the high level of influence which other nations (some of which are competitors of U. S. agriculture) have, through the CUE review process, on deciding which tools will be available to combat pests in the U. S. agriculture and food processing industries. We support the view of the vast majority in the industry, that methyl bromide production and usage should simply be fixed at 50% of the 1991 baseline production quantities until such time as suitable, cost effective alternatives are fully developed and proven.

Nevertheless, we understand EPA's obligations to implement the provisions of the Montreal Protocol. We stand ready to cooperate with EPA in any way possible to develop and implement an allocation management system that is equitable, efficient, and simple.

To this end, and as explained in the attached comments, we believe the "QPS-Like" model should be adopted for administration of Critical Use Exemptions. This model is the simplest for both the regulated community and for regulators, encourages compliance by use of a familiar and proven system of record keeping and reporting, and maintains the efficient distribution system that has developed for methyl bromide.

We were encouraged by EPA's strong public defense

of the U. S. Critical Use Nomination package at the recent OEWG meeting. In particular, we agree that granting of the U. S. nomination as an aggregate amount rather than amounts designated for each of the 16 sectors would improve the flexibility and decrease the complexity of administration of the CUE allocations. We hope EPA will continue to press strongly for this option during further negotiations.

We look forward to continued cooperation to adopt and implement a system that fulfills the requirements of the Protocol, meets the regulatory needs of EPA, and ensures the efficient and equitable distribution of Critical Use Exemptions to methyl bromide users.

Sincerely,

James Nicol
Global Business Manager,
Agricultural Products
Great Lakes Chemical Corporation

cc: David McAllister

**Comments of Great Lakes Chemical Corporation on
Proposals for Allocation of Critical Use Exemptions
for Methyl Bromide**

Introduction

Following EPA's recent stakeholder meetings to receive input on proposals for administration of Critical Use Exemptions, Great Lakes Chemical Corporation (a registrant and major producer of methyl bromide) discussed the options for administration of CUEs with its distributors and with representatives of end-users. Based on these discussions, we believe the "QPS-Like Model" with slight modification is the best model for administration

of the CUEs. Our reasons for supporting this model are given below.

1. Uses a proven allocation system

Under the system of allowances established in late 1993, producers and importers of methyl bromide were assigned production and consumption allowances based on their 1991 production. In recent years, as production has been reduced, first to 75%, then to 50% and 30% of the 1991 baseline, the proportion of allowances assigned to each producer or importer has remained the same. We support EPA's intention under the QPS-Like Model to use the existing 1991 proportions in assigning production allowances for Critical Use Exemptions. More specifically, these "CUE Production Allowances" should be assigned in proportion to the 1991 Consumption Allowances, since this would be representative of the historic quantities produced for domestic use.

Since the 1998 freeze of methyl bromide production at 1991 levels, producers and distributors have, in effect, allocated available product to meet demands of applicators and users. This has been especially true in recent years, as production has been reduced to its current level of 30% of the 1991 baseline. Overall, this market-based system has ensured that ample product is made available to the most valuable needs. The proposed "QPS Like" system would continue this system by directly assigning production allocations to manufacturers and importers.

2. Provides a simple way to give preference to participants in the application process

Those users with the greatest need for a continued supply of methyl bromide applied for Critical Use Exemptions through the process established by EPA in 2002. The cost and complexity of the application process effectively limited participation to only those users with bona fide needs. In addition, applicants were required to provide and extensive and possibly confidential information on their operations, to give evidence of efforts to reduce emissions, and to commit to conduct research on alternatives. Since those not participating in the application process (despite EPA's efforts to widely publicize and assist in the application) did none of these things, the validity of their continuing need for methyl bromide cannot be verified. Therefore, EPA should limit the availability of exempt product to those entities that participated in the application process. This could be easily done in the regulation by defining "user" as a person who filed an application for Critical Use Exemption in one of the sixteen sectors defined by EPA.

3. Maintains the current distribution chain

By assigning CUE allocations to producers, the proposed QPS-Like system will maintain the current distribution chain for methyl bromide. Typically, methyl bromide producers ship product in bulk to repackaging/distribution points in areas of highest use. At these repackaging locations, methyl bromide from bulk containers is packaged into cylinders for distribution to dealers or end users. This system, which has developed over decades of use, minimizes transportation costs and allows the repackagers to

formulate the specific products that are needed for local or regional markets. Also, distributors can maintain the inventory necessary to promptly provide the needed product.

Under the other systems proposed by EPA, allowances would be assigned to users or user groups. The allowance holder could place an order with any supplier (producer or distributor), who would then (in the case of a distributor) order product from a producer. This system would create the potential for users to bypass the critical distributor link in the chain, creating confusion and disruption of the entire process. There would also be little incentive for distributors to maintain inventories to respond to the immediate needs of users.

4. Minimizes documentation for users

Under the proposed QPS-Like model, users would not be required to compile or provide any historical use information to establish a baseline use quantity. Compiling such information could be a significant burden, particularly in cases where market or weather conditions have caused treated acres to vary over the averaging period.

The QPS-Like model would only require users to maintain records demonstrating that methyl bromide acquired for exempt uses was, in fact, used for those purposes.

5. Simplifies record keeping, reporting, and tracking

By using a record keeping and reporting system based largely on the existing system for QPS exemptions, the QPS-Like model would be much simpler than the other systems proposed by EPA. The QPS system seems to be

working smoothly, and will be very familiar to all entities in the distribution chain by 2005 when CUEs will first become available.

In contrast, the other options proposed by EPA would greatly increase the complexity of record keeping, reporting, and tracking. The real-time tracking database proposed for the "Auction" or "Canada-Like" models would require significant resources for development, testing and maintenance.

Also, it seems that compliance monitoring would be much more difficult with the Auction or Canada-Like models. With the QPS Like model, compliance issues are likely to be concentrated among four producers and a few distributors; with the other models, hundreds of users and applicators would also be involved.

Overall, the Auction and Canada Like models would impose significant additional record keeping, reporting, and tracking burdens with no additional benefits.

Remaining Issues

Despite the advantages offered by the QPS-Like model, several very difficult issues remain to be resolved.

1. Timing of the Regulation

We are concerned that in spite of EPA's best efforts, it may be difficult to issue a Final Rule by fall, 2004 when it is required. Rather than delay promulgation of the Final Rule until late in 2004, or perhaps early 2005, we encourage EPA to issue an Interim Final Rule if necessary to avoid last minute uncertainty among users, distributors, and manufacturers.

2. Definition of Exempt Uses

So far, EPA has merely categorized its CUE nomination into sixteen sectors. A much more precise definition of qualifying uses must be developed to give adequate guidance to users as they seek to qualify to purchase exempt product. In some cases, the definitions will have a geographic component, since uses in one locale are not necessarily authorized at the same level in another locale.

3. Allocation Among Users

In many cases, the level of CUEs ultimately made available will be substantially less than was applied for, creating the need for an equitable way to distribute limited volume among a multitude of users. It would be particularly disconcerting to a user (who had applied in good faith for CUE) to discover that no methyl bromide is available for his application when he needs it.

Several possible "centers of responsibility" for allocation have been mentioned (manufacturers, distributors, user organization, state departments of agriculture) but all have disadvantages or limitations. We believe a market-based approach, with CUEs made available as a lump sum quantity, offers the best possibility of equitable distribution.

4. Carry-over

None of the proposals discussed to date have addressed the issue of the disposition of methyl bromide that is produced, but not used, in a given year. It is our position that manufacturers should be allowed to produce their full allocation of CUE product each year. If unsold product remains at the end of the year, it should remain available for qualifying Critical Use

Applications, without affecting the next year's CUE production.

Existing Inventories

In early 2003, methyl bromide manufacturers, importers, and some distributors were required (through a request issued under Section 114 of the Clean Air Act) to report their inventory as of December 31, 2002. As fully discussed in comment submitted by the Methyl Bromide Industry Panel (Susan Lewis to Drucilla Hufford, January 29, 2003) product included in this inventory should have no effect on the U. S. CUE nomination, either now or in the future. All product in the inventory was legitimately produced using Production and Consumption allowances, and should remain available for emissive uses, notwithstanding any amount that may be made available through the CUE process.

Conclusions

For all of the reasons discussed above, we strongly encourage EPA to adopt the "QPS Like" model (with an additional provision to limit CUEs to those entities participating in the application process) for inclusion in the proposed rule to be put forward later this year. This model is the simplest for both the regulated community and for regulators, encourages compliance by use of a familiar and proven system of record keeping and reporting, and maintains the efficient distribution system that has developed for methyl bromide.

We encourage EPA to consider our comments on the remaining issues, and to continue engage in active

dialog with the stakeholder community to develop the best possible regulation.

We stand ready to cooperate with EPA in any way possible to develop and implement a CUE allocation management system that is equitable, efficient, and simple.

GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION COMMENTS:

Georgia Fruit and Vegetable Growers Association
P.O. Box 2945
Lagrange, GA 30241
1-877-99GFVGA - fax- 706-883-8215
www.gfvga.org

August 22, 2003

Dear Ms. Finman:

On behalf of the Georgia Fruit and Vegetable Growers Association, an organization representing growers and shippers of fruit and vegetables in Georgia we submit this letter for the record. The GFVGA has also filed Critical Use Exemptions (CUE) on behalf of Georgia fruit and vegetable growers.

We have followed the stakeholder meetings, participating in the meetings in Orlando and Washington, D.C., which EPA has sponsored to discuss a proposed allocation system for the CUEs for methyl bromide. These meetings have been very valuable and informative. We appreciate EPA's efforts to keep the user stakeholders involved in the process and keeping EPA open to comments and suggestions.

The following are our comments on the information that has been presented at the meetings.

1. ALLOCATION MODELS

Of the three models that were presented, the QPS-Like Model has the most potential to be workable. Although it is not ideal - it has the least number of new regulations and under the model it could maintain the current distribution channels. This is the model we would recommend.

Since the 1998 freeze, producers and distributors of methyl bromide have, in effect, allocated the available product to meet the demands of our growers. This market-based system has ensured that ample product is made available to the most valuable needs. The QPS Like Model would maintain this market-based system.

Our primary concern for this model is to be sure the users that applied for methyl bromide use under the CUE process is given preference in the allocation process. This concern is addressed in number two below.

The QPS like -Canada Model would be very burdensome to establish a baseline and could add a whole new agency at the Federal level just to oversee the allocation process. We are opposed to this model.

The QPS like - Auction is the most unacceptable model. This model could create a situation where the cost of the product would be unreachable for a small grower. It would also totally disrupt the current distribution chain that is working very well. We are extremely opposed to this model.

2. PREFERENCE TO CUE APPLICANTS

We strongly feel within any allocation model, preference should be given to CUE applicants. The applicants spent numerous hours and tremendous staff-time to file a Critical Use Exemption application. In some cases growers and/or other users

were invited to participate in the 'application process' and elected not to participate. It is inherently unfair to those growers, organizations and associations that spent the time and effort to file an application and then allow a non-applicant the same access to the allocation as the applicant has.

If the allocation is made by sectors, there could be a sub-sector allocation by applicant. This would guarantee all stakeholders represented by the applicant would have access to the product. Also for applicants that are willing to handle the 'certification' process in their sector this would insure that applicant is guaranteed access to the product.

3. GROWER CERTIFICATION

In developing the U.S. CUE nomination the EPA made certain assumptions and calculations that reduced some applicants' CUE request up to 85%. The criteria by which these reductions were made must be provided to the applicant and also made a part of the 'allocation' process.

A simple certification process could require the grower to show proof of purchase for methyl bromide during the past year (or an average of purchases for the past three years). Documentation could be by invoice, purchase order or billing statement. Growers will have to curtail methyl bromide purchases to the level of 'recommended allocation' from the applicant's CUE. If growers are allowed to purchase Methyl Bromide at the same level as they have purchased it in the past, the total allocation of methyl bromide will expire before all users have an opportunity to purchase the product. This 'purchase certification' could be

handled by the CUE applicant or at the distributor level with the 'certifications' then filed with EPA.

Methyl bromide CUE supply should be initially limited to the existing growers when the CUE application was filed. Crop acreage increases by growers and new growers getting into the business would have access to methyl bromide if excess product in a sector is available.

4. PENALTIES AND FINES

Several speakers presented testimony as to the severe penalties that could occur for failure to compile with methyl bromide usage under the clean air act. It was stated fines could be as high as 1.3 million dollars PER ACRE!!

We strongly recommend EPA review and change the language for the fines and penalties as they relate to methyl bromide. A grower could make an unintentional mistake and lose the farm!!! These fines were developed with for major industry and national corporations. We hope it can be fixed!!

Conclusions

Any allocation management system must be equitable, efficient and simple to the maximum degree possible. We strongly encourage EPA to adopt the "QPS Like" model, with an additional provision to limit CUEs to those entities participating in the application process. We believe this model is the simplest for both the regulated community and for regulators, encourages compliance by using a familiar and proven system of record keeping and reporting, and maintains the current efficient distribution system for methyl bromide.

Thank you for the opportunity to submit these comments. Please feel free to call upon the Georgia Fruit and Vegetable Growers Association if there is any additional information you require or clarification of the above comments.

Sincerely,

Charles T. Hall, Jr.
Executive Director
Georgia Fruit and Vegetable
Growers Association
P. O. Box 2945
LaGrange, GA 30241
706-845-8200
fax- 706-883-8215

HENDRIX AND DAIL, INC. COMMENTS:

August 21, 2003

Dear Ms. Finman,

I understand that EPA is going to consider methyl bromide in inventory on January 1, 2005 as inventory that will reduce the total manufacturers can produce for the Critical Use Exemption allocation from the Parties. This inventory was produced as baseline or during the baseline phasedown. It is my understanding the Clean Air Act only controlled production - not use - and that methyl bromide left in inventory could be used for any labeled use. If inventory methyl bromide is used to meet CUE pounds granted by the parties, then it appears that the rules have changed mid-game.

I submit that farmers, along with distributors holding this material, will be penalized for the adoption of alternatives, reductions in a.i. per acre, application of more effective films (i.e. hdpe), the

investment in more accurate computerized flow control systems for applicators, and encouraging the stewardship of methyl bromide at the applicator and grower level. Clearly, recent questions posed by Tom Land of the US EPA to the CUE applicants, has demonstrated that stewardship of methyl bromide is a focal point in the granting of CUE's by the Parties.

This methyl bromide in inventory was produced under the phase down schedule of the Montreal Protocol. Thus, this material has already been taxed once (the phase down schedule of the Protocol). To tie this inventory into the CUE allocation is double taxation. It is critical that distributors maintain some inventory buffer to meet the shortfall needs within the CUE process. A case in point is the EPA application for CUE production of methyl bromide for tomato production in the S.E. United States. The EPA request of the parties was much lower than the application of the respective applicants. Inventory being held by distributors will be used to meet that and other shortfalls needs, many which have yet to surface.

The U.S. Government has spent over 150 million dollars. Industry, consortiums, universities, and individual farmers have also spent many millions of dollars over the past 12 years and no alternative has yet to be developed for the cases that the EPA presented to the Parties. For the security of our food, fiber, and timber supply, EPA and the Parties should not penalize the distributor and end user of methyl bromide for good stewardship over the past several years. I urge the EPA to consider all the

implications of utilizing existing inventory, that was built under the Clean Air Act during the phase down period, to reduce the production of CUE pounds.

Respectively yours,

Steve Godbehere